



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB3106

Introduced 2/19/2016, by Sen. Julie A. Morrison - Pamela J. Althoff

SYNOPSIS AS INTRODUCED:

725 ILCS 5/115-10

from Ch. 38, par. 115-10

Amends the Code of Criminal Procedure of 1963. Provides a new definition for a moderately intellectually disabled person and a severely or profoundly intellectually disabled person in the Section pertaining to hearsay exceptions for the admission of evidence in a prosecution for a physical or sexual act perpetrated upon or against a severely or profoundly intellectually disabled person or a moderately intellectually disabled person. Defines a moderately intellectually disabled person as a person, who at the time of the commission of the offense, suffers from a mental illness in which the person's ability to exercise rational judgment is impaired. Defines a severely or profoundly intellectually disabled person, as a person, who at the time of the commission of the offense, suffers from a significant mental illness to the extent that the person's ability to exercise rational judgment is impaired.

LRB099 19047 SLF 43436 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing Section 115-10 as follows:

6 (725 ILCS 5/115-10) (from Ch. 38, par. 115-10)

7 Sec. 115-10. Certain hearsay exceptions.

8 (a) In a prosecution for a physical or sexual act
9 perpetrated upon or against a child under the age of 13, ~~or a~~
10 severely or profoundly intellectually disabled person, or a
11 moderately intellectually disabled person, ~~who was a person~~
12 ~~with a moderate, severe, or profound intellectual disability as~~
13 ~~defined in this Code and in Section 2-10.1 of the Criminal Code~~
14 ~~of 1961 or the Criminal Code of 2012 at the time the act was~~
15 ~~committed,~~ including, but not limited, to prosecutions for
16 violations of Sections 11-1.20 through 11-1.60 or 12-13 through
17 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012
18 and prosecutions for violations of Sections 10-1 (kidnapping),
19 10-2 (aggravated kidnapping), 10-3 (unlawful restraint),
20 10-3.1 (aggravated unlawful restraint), 10-4 (forcible
21 detention), 10-5 (child abduction), 10-6 (harboring a
22 runaway), 10-7 (aiding or abetting child abduction), 11-9
23 (public indecency), 11-11 (sexual relations within families),

1 11-21 (harmful material), 12-1 (assault), 12-2 (aggravated
2 assault), 12-3 (battery), 12-3.2 (domestic battery), 12-3.3
3 (aggravated domestic battery), 12-3.05 or 12-4 (aggravated
4 battery), 12-4.1 (heinous battery), 12-4.2 (aggravated battery
5 with a firearm), 12-4.3 (aggravated battery of a child), 12-4.7
6 (drug induced infliction of great bodily harm), 12-5 (reckless
7 conduct), 12-6 (intimidation), 12-6.1 or 12-6.5 (compelling
8 organization membership of persons), 12-7.1 (hate crime),
9 12-7.3 (stalking), 12-7.4 (aggravated stalking), 12-10 or
10 12C-35 (tattooing the body of a minor), 12-11 or 19-6 (home
11 invasion), 12-21.5 or 12C-10 (child abandonment), 12-21.6 or
12 12C-5 (endangering the life or health of a child) or 12-32
13 (ritual mutilation) of the Criminal Code of 1961 or the
14 Criminal Code of 2012 or any sex offense as defined in
15 subsection (B) of Section 2 of the Sex Offender Registration
16 Act, the following evidence shall be admitted as an exception
17 to the hearsay rule:

18 (1) testimony by the victim of an out of court
19 statement made by the victim that he or she complained of
20 such act to another; and

21 (2) testimony of an out of court statement made by the
22 victim describing any complaint of such act or matter or
23 detail pertaining to any act which is an element of an
24 offense which is the subject of a prosecution for a sexual
25 or physical act against that victim.

26 (b) Such testimony shall only be admitted if:

1 (1) The court finds in a hearing conducted outside the
2 presence of the jury that the time, content, and
3 circumstances of the statement provide sufficient
4 safeguards of reliability; and

5 (2) The child or person with a moderate, severe, or
6 profound intellectual disability either:

7 (A) testifies at the proceeding; or

8 (B) is unavailable as a witness and there is
9 corroborative evidence of the act which is the subject
10 of the statement; and

11 (3) In a case involving an offense perpetrated against
12 a child under the age of 13, the out of court statement was
13 made before the victim attained 13 years of age or within 3
14 months after the commission of the offense, whichever
15 occurs later, but the statement may be admitted regardless
16 of the age of the victim at the time of the proceeding.

17 (c) If a statement is admitted pursuant to this Section,
18 the court shall instruct the jury that it is for the jury to
19 determine the weight and credibility to be given the statement
20 and that, in making the determination, it shall consider the
21 age and maturity of the child, or the intellectual capabilities
22 of the person with a moderate, severe, or profound intellectual
23 disability, the nature of the statement, the circumstances
24 under which the statement was made, and any other relevant
25 factor.

26 (d) The proponent of the statement shall give the adverse

1 party reasonable notice of his intention to offer the statement
2 and the particulars of the statement.

3 (e) Statements described in paragraphs (1) and (2) of
4 subsection (a) shall not be excluded on the basis that they
5 were obtained as a result of interviews conducted pursuant to a
6 protocol adopted by a Child Advocacy Advisory Board as set
7 forth in subsections (c), (d), and (e) of Section 3 of the
8 Children's Advocacy Center Act or that an interviewer or
9 witness to the interview was or is an employee, agent, or
10 investigator of a State's Attorney's office.

11 (f) For the purposes of this Section:

12 "Moderately intellectually disabled person" means a
13 person, who at the time of the commission of the offense,
14 suffers from a mental illness in which the person's ability to
15 exercise rational judgment is impaired.

16 "Severely or profoundly intellectually disabled person"
17 means a person, who at the time of the commission of the
18 offense, suffers from a significant mental illness to the
19 extent that the person's ability to exercise rational judgment
20 is impaired.

21 (Source: P.A. 99-143, eff. 7-27-15.)